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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------|------------------------|
| 10/596,309 | 02/22/2007 | Barry Geer | 050588/312849 | 5197 |
| 826 7590 10/29/2009 ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000 | | | EXAMINER YACOB, SISAY | |
| | | | ART UNIT 2612 | PAPER NUMBER |
| | | | MAIL DATE 10/20/2009 | DELIVERY MODE PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/596,309

Applicant(s)

GEER, BARRY

Examiner

SISAY YACOB

Art Unit

2612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/BENJAMIN C. LEE/
Supervisory Patent Examiner, Art Unit 2612

Continuation of 11. does NOT place the application in condition for allowance because:

1. Applicant argued that the combined prior arts of Armstrong and Lambert does not disclose the limitation. Particularly, applicant argument is directed to Lambert not disclosing the claimed securing means: "securing means movably securable on the securing line in an axial direction to secure the sections of the pole together".

Examiner respectfully disagrees with applicant's assertion. The combination of Armstrong and Lambert as presented discloses the claimed securing means and securing lines. Lambert discloses the claimed securing means and securing lines (flexible strand 44/106 cooperates with the sectional structure and corresponding coupling/insertion aspects, meets the claimed limitation, since the flexible strand, which extends the entire length of the structure, Col. 4, lines 9-11, is used to movably secure the sections of the pole by cooperation with the rest of the structure, same as applicant's disclosed invention in the claimed level of detail. The flexible strand is pulled downward to axially move the structure members to collapsed and folded position, Col. 4, lines 30-34, and the flexible strand is pulled upward to axially move the structure members to extend position, Col. 4, lines 39-46), as presented in the previous Office Action dated July 08, 2009.

Embodiment of Figs. 1-3, 10 and col. 3, lines 33-51 further clarifies that the outer and inner elements (e.g. 50, 20 respectively) and the strand section (e.g. 44) are dimensioned and constructed such that there are no slack in the strand section when assembled ("The length of each strand section 44 is less than the length of outer element 50. For example, the outer element length can be about 9 inches, the inner element about 6 inches, the strand sections about 5 inches. In the assembled positions, each end of inner elements 20 would then extend 2 inches into the adjacent outer elements 50, with 2 inches between adjacent outer elements 50" thus leaving no slack on the strand section 44) and that "added lateral strength can be achieved by axially tensioning the member..." It is noted that Lambert discloses 2 main embodiments in which Figs. 1-3 and 10 are directed an embodiment where axial tensioning includes use of tensioned strand sections, and Figs. 5-6 additionally provide aspects of another embodiment where after assembly the strand sections are relaxed. The rejection relied on and cited Figs. 1-13 and related disclosure which are inclusive of the tensioning embodiment.